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14 *and as representative of the Estate of Daniel Shaver*

15 **UNITED STATES BANKRUPTCY COURT**

16 **FOR THE DISTRICT OF ARIZONA**

17 In re:

18 Philip Mitchell Brailsford

19 Corinne Elizabeth Brailsford

20 Debtors.

In Proceedings Under Chapter 7

Case No. 2:19-bk-00802-BKM

Adversary Proceeding No.: 2:19-AP-
00171-BKM

**THE SWEET PLAINTIFFS' MOTION
TO WITHDRAW THE REFERENCE
OF ADVERSARY PROCEEDING TO
ALLOW CLAIMS TO PROCEED IN
DISTRICT COURT CASE NO.
CV-17-00152-PHX-GMS¹**

(Oral Argument Requested)

21
22
23 Plaintiffs/Creditors Laney Sweet, for herself and as personal representative of the Estate
24 of her late husband, Daniel Shaver, and as guardian of her minor children, N.S. and E.S.
25 (collectively, the "Sweet Plaintiffs") respectfully submit this motion to withdraw the reference
26 of jurisdiction for the adjudication and liquidation of their claims against Defendants/Debtors

27
28 ¹ The Sweet Plaintiffs have filed this Motion with the Bankruptcy Court Clerk pursuant to
Local Rules of Bankruptcy Procedure for the District of Arizona, Rule 5011-1, though they
recognize the Clerk shall transmit the Motion to the Clerk of the U.S. District Court for the
District of Arizona for resolution by Judge Snow in Case No. CV-17-00152-PHX-GMS.

Philip Mitchell Brailsford and Corinne Elizabeth Brailsford (“Debtor Defendants”) as preserved in their adversary proceeding filed in this case (Adversary Proceeding No. 2:19-AP-00171-BKM (the “Adversary Proceeding”)) pursuant to 28 U.S.C.S. § 157(b),(d) and Federal Rule of Bankruptcy Procedure 5011. The withdrawal will allow the Sweet Plaintiffs’ pre-existing federal and state constitutional and state law tort claims against the Debtor Defendants to be fully adjudicated and liquidated in their earlier, pre-bankruptcy tort action in U.S. District Court for the District of Arizona before the Honorable Murray Snow, Case No. CV-17-00152-PHX-GMS (the “District Court Lawsuit”).

Because the Sweet Plaintiffs’ claims against the Debtor Defendants involve personal injury claims to which the plaintiffs are entitled to a jury trial and which also require resolution of complex non-bankruptcy federal law for claims under 42 U.S.C. § 1983, withdrawal of the reference is mandatory per 28 U.S.C. §§ 157(b)(5) and 157(d). And, even if withdrawal were not mandatory, the Court should exercise its discretion under 28 U.S.C. § 157(d) to withdraw the reference because the willful and malicious injury variant of the Sweet Plaintiffs’ claims which are the subject of the Adversary Proceeding entirely overlap with the non-willful and malicious variant of those claims that are presently pending and awaiting trial in the Federal District Lawsuit so that the Sweet Plaintiffs can enforce their right to recovery against indemnitors and insurers of the Debtor Defendants. To avoid wasteful, duplicative proceedings, end the risk of inconsistent outcomes, achieve judicial efficiency, ensure maximum time and resource efficiency for the parties, and protect the Sweet Plaintiffs’ rights to a jury trial on all their claims against the Debtor Defendants, the Court has compelling good cause sufficient to justify withdrawal of the reference under Section 157(d).

I. The Procedural History.

A. The District Court Lawsuit.

The Sweet Plaintiffs filed the District Court Lawsuit long before the Debtor Defendants filed their bankruptcy proceeding on January 24, 2019. The District Court Lawsuit seeks relief against the Debtor Defendants under various civil theories, including state law claims by the Plaintiffs for wrongful death under A.R.S. § 12-611, *et seq.*, and claims by Plaintiffs for

1 constitutional rights violations under 42 U.S.C. § 1983. The Plaintiffs claims arise out of the
2 wrongful, fatal shooting of Daniel Shaver by Debtor Defendant Philip Mitchell Brailsford who
3 was operating as a Mesa Police Department Officer in January, 2016.

4 **B. The Bankruptcy Adversary Proceeding.**

5 After the Debtor Defendants filed their bankruptcy action, and before the Bankruptcy
6 Court issued its discharge order in that action on May 6, 2019, the Sweet Plaintiffs filed an
7 adversary complaint with the Bankruptcy Court asserting the same type of wrongful death and
8 Section 1983 claims they filed against the Debtor Defendants in the Federal District Lawsuit.
9 [Doc. 1 in Case 2:19-AP-00171-BKM (filed April 26, 2019)]. This resulted in creation of the
10 Adversary Proceeding. The Sweet Plaintiffs assert that their claims against the Debtor
11 Defendants as pled in the District Court Lawsuit were capable of being proven both (1) with
12 less than the proof of willful and malicious injury required to make the resulting liability non-
13 dischargeable per 11 U.S.C.S. § 523(a)(6), and, (2) alternatively, with sufficient proof of willful
14 and malicious injury to make the resulting liability non-dischargeable under 11 U.S.C.S. §
15 523(a)(6). Their Adversary Proceeding seeks a determination that the liability of the Debtor
16 Defendants arising from the willful and malicious injury variant of the Sweet Plaintiffs' claims
17 are non-dischargeable per 11 U.S.C.S. § 523(a)(6). The filing of the Adversary Proceeding was
18 required per Rule 7001, Fed.R.Bankr.P. to preserve the Sweet Plaintiffs' arguments that the
19 liabilities created by the willful and malicious injury variant of their claims against the Debtor
20 Defendants are non-dischargeable. Because the underlying claims have not been fully
21 adjudicated in any court, and the Debtor Defendants' liability is fundamental to the non-
22 dischargeability analysis, the Adversary Proceeding currently requires the liability
23 determination for the claims in their willful and malicious injury forms.

24 **C. The Existing Pursuit of the Discharged Variant of the Sweet Plaintiffs'**
25 **Claims in the District Court Lawsuit.**

26 To the extent the dischargeable, non-willful and malicious injury variants of the
27 Plaintiffs' claims that were filed in the District Court Lawsuit were subject to the discharge
28 order in this bankruptcy proceeding, 11 U.S.C. § 524(e) grants the Sweet Plaintiffs a right to

1 continue to pursue any such discharged claims in the District Court Lawsuit for the limited
2 purpose of establishing liability needed to collect from any insurance policy/indemnification
3 agreements that may cover the debtors' conduct. *See In re Walker*, 927 F.2d 1138, 142 (10th
4 Cir. 1991) (11 U.S.C.S. § 524(e) "permits a creditor to bring or continue an action directly
5 against the debtor for the purpose of establishing the debtor's liability when . . . establishment
6 of that liability is a prerequisite to recovery from another entity."); *Houston v. Edgeworth (In*
7 *re Edgeworth)*, 993 F.2d 51, 54-55 (5th Cir. 1993); *see also, Green v. Welsh*, 956 F.2d 30, 33-
8 34 (2d Cir. 1992); 3 R. Babitt, A. Herzog, R. Mabey, H. Novikoff, & M. Sheinfeld, *Collier on*
9 *Bankruptcy* para. 524.01 at 524-16 (15th ed.1987). The injunction resulting from the
10 Bankruptcy Court's discharge order does not prohibit the District Court Lawsuit claims from
11 proceeding to adjudication and liquidation before the District Court in that form. *See In re*
12 *Beeney*, 142 B.R. 360 (B.A.P. 9th Cir. 1992); *In re Jet Florida Systems, Inc.*, 883 F.2d 970, 976
13 (11th Cir. 1989); *First Fid. Bank v. McAteer*, 985 F.2d 114, 118 (3d Cir. 1993) ("Courts, relying
14 on 11 U.S.C.S. § 524(e), have allowed claimants to proceed with tort claims against the debtor
15 for the purpose of collecting from the debtor's liability insurer."); *In re Walker*, 927 F.2d 1138,
16 1142 (10th Cir. 1991) (same); *In re Greenway*, 126 Bankr. 253, 255 (Bankr. E.D. Tex. 1991)
17 (same); *In re Peterson*, 118 Bankr. 801, 804 (Bankr. D.N.M. 1990) (same); *In re Lembke*, 93
18 Bankr. 701, 702-03 (Bankr. D.N.D. 1988) (same); *In re Mann*, 58 Bankr. 953, 959 (Bankr.
19 W.D. Va. 1986) (same). The Sweet Plaintiffs filed notice in the District Court Lawsuit on
20 September 11, 2019, of their intent to pursue those variants of their claims against the Debtor
21 Defendants to adjudication and liquidation. [See Doc. No. 347, District Court Lawsuit]. Thus,
22 the Sweet Plaintiffs' claims against the Debtor Defendants are already proceeding to trial in
23 their discharged forms in the Federal District Lawsuit.

24 **D. The Most Efficient and Appropriate Adjudication and Liquidation of the**
25 **Sweet Plaintiffs' Non-dischargeable Claims Would Occur in the District**
26 **Court Lawsuit.**

27 Also still pending in the District Court Lawsuit are parallel claims by the Sweet Plaintiffs
28 against five other current and former Mesa Police Department officers who were part of the
reaction team that converged on Daniel Shaver with Debtor Defendant Brailsford, along with

1 the City of Mesa (collectively, the “Non-Debtor Defendants”). Moreover, on June 23, 2017,
2 the District Court consolidated the Sweet Plaintiffs’ claims with similar claims that had been
3 filed by Daniel Shaver’s surviving parents, Grady and Norma Shaver (the “Shaver Plaintiffs”)
4 against the Debtor Defendants and other Non-Debtor Defendants in a separate District of
5 Arizona action (Case No. 2:17-cv-00715-GMS). [See Doc. 43, District Court Lawsuit]. The
6 Shaver Plaintiffs did not preserve any claim to non-dischargeability against the Debtor
7 Defendants, but have advised the parties and District Court of their intent to similarly proceed
8 on their claims against the Debtor Defendants for the limited purpose of enforcing any right to
9 recovery against the City of Mesa as indemnitor. [See Doc. 334, District Court Lawsuit].

10 During pre-bankruptcy proceedings in the District Court to which the Debtor Defendants
11 were active parties, the District Court considered objections by the Debtor Defendants to the
12 Sweet Plaintiffs’ request to amend their complaint [See Doc. 34, District Court Lawsuit]. And,
13 the District Court considered motions to dismiss by the Debtor Defendants. [See Docs. 78, 82,
14 84, 137 (Order), District Court Lawsuit]. The District Court also similarly considered motions
15 to dismiss by the other Non-Debtor Defendants – some of which the Debtor Defendants had
16 joined. [See District Court Lawsuit Docs. 77, 78, 81, 82 (includes joinder by
17 Debtor/Defendants), 83, 84 (includes joinder)].

18 Also, long before the Debtor Defendants sought bankruptcy protection, the District
19 Court considered and decided a motion to stay discovery by a co-defendant of the Debtor
20 Defendants (Mr. Langley) who ultimately filed an interlocutory appeal with the Ninth Circuit
21 of the District Court’s ruling on his qualified immunity argument. Subsequently, and again
22 well before the Debtor Defendants filed their bankruptcy petition, the Debtor Defendants and
23 the Sweet Plaintiffs and Shaver Plaintiffs engaged in disclosure and discovery. The Debtor
24 Defendants even served their own Third Supplemental Disclosure containing reports of two
25 purported expert witnesses just days before they filed their bankruptcy petition. [See Ex. A
26 (copy of Third Supplemental Disclosure)].

27 After the Debtor Defendants filed for bankruptcy protection, the District Court decided
28 multiple party disputes over discovery issues, including denying the Non-Debtor Defendants’

1 motion to stay proceedings because of the Debtor Defendants' bankruptcy filing. And, the
2 District Court has decided motions for summary judgment filed by all of the Non-Debtor
3 Defendants. [See District Court Lawsuit Doc. 230 (ruling on summary judgment motions and
4 motion to stay)]. Finally, in October, 2019, the parties in the District Court Lawsuit completed
5 depositions of all individual defendants, of Ms. Sweet, and of various defense expert witnesses.
6 The depositions included Debtor Defendant Philip Mitchell Brailsford who was deposed as a
7 material witness regarding the claims made against other defendants. Defense counsel for Mr.
8 Brailsford also attended every deposition, though counsel undersigned believes they did not
9 participate in any active questioning.

10 For multiple reasons provided in this motion, the District Court, specifically Judge
11 Snow, is far better equipped to adjudicate and liquidate the liability issues in the Sweet
12 Plaintiffs' claims asserted against the Debtor Defendants in the Adversary Proceeding. Plus,
13 the Sweet Plaintiffs are entitled to a jury trial on their claims against the Debtor Defendants,
14 which the Bankruptcy Court proceeding will not provide. Once the Sweet Plaintiffs' claims
15 have been liquidated and adjudicated through the District Court in conjunction with the District
16 Court Lawsuit, then the Bankruptcy Court is an appropriate forum to resolve the bankruptcy
17 issue of dischargeability of any debts established through the District Court adjudication.
18 However, to allow the District Court to join and adjudicate the overlapping liability questions
19 for all variants of the Sweet Plaintiffs' claims against the Debtor Defendants, the District Court
20 must withdraw the reference of jurisdiction over the claims in the Adversary Proceeding.

21 **II. Withdrawal of the Reference is Mandatory for the Adjudication and Liquidation**
22 **of the Sweet Plaintiffs' Personal Injury and Wrongful Death Claims.**

23 The Sweet Plaintiffs do not dispute that the Bankruptcy Court maintains jurisdiction over
24 the determination of the dischargeability of the Debtor Defendants' debts under 11 U.S.C.S. §
25 523(a)(6), and would be a proper forum for determining the dischargeability issues concerning
26 the Sweet Plaintiffs' willful and malicious injury-based claims against the Debtor Defendants
27 once the liability and damages aspects of those claims are fully adjudicated and liquidated.
28 However, the Sweet Plaintiffs demand and have preserved their rights to a jury trial on their

claims against Debtor Defendants, and those claims seek damages for personal injury to the Sweet Plaintiffs under appropriate federal and state law theories. The Sweet Plaintiffs have not consented to a trial by jury of their claims before the Bankruptcy Court. Therefore, the Bankruptcy Court cannot conduct the jury trial to which the Sweet Plaintiffs remain entitled. *See e.g., Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1194 (9th Cir. 2003) (citing 28 U.S.C.S. § 157(e) (“[T]he bankruptcy court is unable to preside over a jury trial absent explicit consent from the parties and the district court.”); *see also In re Cinematronics, Inc.*, 916 F.2d 1444, 1451 (9th Cir. 1990) (bankruptcy court cannot conduct jury trial in noncore proceedings); *Binder v. Price Waterhouse & Co., LLP (In re Resorts Int'l, Inc.)*, 372 F.3d 154, 161, 2004 U.S. App. LEXIS 12252, *14, 43 Bankr. Ct. Dec. 46.

The District Court must withdraw the reference to the Bankruptcy Court of the willful and malicious injury variant of the Sweet Plaintiffs’ claims because the Sweet Plaintiffs assert causes of action for personal injury and wrongful death that have yet to be adjudicated or liquidated. 28 USCS § 157(b)(5) provides that “the district court **shall** order that personal injury tort and wrongful death claims **shall be tried** in the district court in which the bankruptcy case is pending, or in the district court in the district in which the claim arose.” 28 USCS § 157(b)(5) (emphasis added); *see also In re City of San Bernardino*, Cal., 2015 U.S. Dist. LEXIS 152833, *9 (C.D. Cal. Nov. 10, 2015) (“personal injury tort and wrongful death claims” that arise in a bankruptcy proceeding **must be tried** before the District Court) (emphasis added); *Leatham v. Von Volkmar (In re Volkmar)*, 217 B.R. 561, 565 (Bankr. N.D. Ill. 1998) (“[T]he plain language of 28 U.S.C.S § 157(b)(5) flatly prohibits a bankruptcy court from adjudicating and liquidating a personal injury claim even when brought within a dischargeability proceeding.”); *In re Nifong*, 2008 Bankr. LEXIS 1608, *4-5, 60 Collier Bankr. Cas. 2d (MB) 55; *Williamson v. Patterson (In re Patterson)*, 150 B.R. 367, 368 (E.D. Va. 1993) (trial of personal injury tort actions is required in the district court); *Anthony v. Baker (In re Baker)*, 86 B.R. 234, 235 (D.Colo. 1988) (court withdrew reference in dischargeability action alleging § 1983 violation under § 157(d) while noting that withdrawal appeared mandatory under § 157(b)(5)). Here, even the Sweet Plaintiffs’ claims under 42 U.S.C. § 1983 are categorized as “personal injury”

1 torts. Thus, for such tort claims, withdrawal of the reference and allowing proceedings on the
2 underlying merits of the claims in the District Court is mandated by the bankruptcy statutes.

3 Illustrative of this point is *Estate of Horner v. Bailor*, 2019 U.S. Dist. LEXIS 47371, *3-
4 4 (N.D. Cal. March 21, 2019). There, the bankruptcy court noted that “administration of this
5 adversary proceeding [concerning a claim of personal injury tort or wrongful death] will require
6 proceedings before the bankruptcy and district court” because “although the bankruptcy court
7 possessed jurisdiction over the question of dischargeability, the liquidation of a wrongful death
8 claim is a non-core matter that should be tried in the district court pursuant to 28 U.S.C. §
9 157(b)(2)(B) and (b)(5).” *Id.* at *4 (citing Dkt. No. 77-1, Ex. 2 at 2). Similar to *Estate of Horner*,
10 the Sweet Plaintiffs’ non-dischargeable causes of action against the Debtor Defendants are
11 personal injury claims for wrongful death and deprivation of civil rights brought pursuant to 42
12 U.S.C. § 1983. Withdrawal of the reference is further mandatory under § 157(b) because the
13 Sweet Plaintiffs’ are entitled to have a jury adjudicate and liquidate their personal injury tort
14 claims in the District Court, and the Bankruptcy Court lacks jurisdiction to conduct a jury trial
15 on such claims. *Cf. In re Patterson*, 150 B.R. 367, 368 (E.D. Va. 1993) (withdrawing the
16 reference after finding that the bankruptcy court did not have subject matter jurisdiction with
17 respect to plaintiff’s civil rights action brought pursuant to 42 U.S.C. § 1983).

18 What’s more, federal courts hold that the mandatory withdrawal component of 28 U.S.C.
19 § 157(d) *mandates* withdrawal in cases requiring material consideration of non-bankruptcy
20 federal law, such as the complex civil rights issues raised by a police shooting case under 42
21 U.S.C. § 1983. *See* 28 U.S.C.S. § 157(d); *Walton v. AG Credit, ACA (In re Walton)*, 158 B.R.
22 939, 942 (Bankr. N.D. Ohio 1993) (holding that 28 U.S.C. § 157(d) made withdrawal of the
23 reference mandatory for claims alleging due process, equal protection and discrimination
24 claims under 42 U.S.C. § 1983 because they involved the reviewing court in addressing
25 substantive civil rights issues (citing *Pereira v. New York Hotel and Motel Trades Council (In*
26 *re Chadbourne Industries, Ltd.)*, 100 Bankr. 663 (S.D.N.Y. 1989)); *In re Baker*, 86 B.R. 234,
27 238 (D. Colo. 1988) (holding that withdrawal of reference over adversary proceeding involving
28 wrongful prosecution claim brought under 42 U.S.C. § 1983 “is mandatory under 28 U.S.C. §

1 157(d).”); *see also* *Sec. Farms v. Int’l Bhd. Of Teamsters, Chauffers, Warehousemen &*
2 *Helpers*, 124 F.3d 999, 1008 (9th Cir. 1999) (“Thus, § 157(d) “*mandates* withdrawal in cases
3 requiring material consideration of non-bankruptcy federal law.”) (emphasis in original).;
4 *Carmel v. Galam (In re Larry's Apt., L.L.C.)*, 210 B.R. 469, 472 (D. Ariz. 1997) (Section 157(d)
5 provides for mandatory withdrawal if the proceeding requires consideration of both the
6 Bankruptcy Code and other federal statutes). Applying the mandatory withdrawal component
7 of Section 157(d) is especially appropriate in a case like this one which the District Court
8 understands from the multiple motions to dismiss and summary judgment motions it has
9 decided already require the Court to apply sophisticated, fact-driven Section 1983 law to
10 questions of qualified immunity, individual liability, and employer liability. Where a
11 bankruptcy court is required like that to engage in “something more than the mere process of
12 examining, thinking about or taking into account” federal laws other than the Bankruptcy Code,
13 withdrawal is mandated. *In re Horizon Air, Inc.*, 156 B.R. 369, 373 (N.D.N.Y. 1993).

14 Here the elements and merits of the Sweet Plaintiffs’ claims against the Debtor
15 Defendants derive largely from non-bankruptcy provisions of federal and state law, which
16 predominate over the sole core bankruptcy issue for determination—dischargeability. Logic
17 requires determination of the merits of the Sweet Plaintiffs’ federal law claims before even
18 reaching the determination of whether or not the claims are dischargeable. As noted in the many
19 decisions cited above, such a determination on the merits requires District Court proceedings
20 before a jury. Therefore, the Court must grant the Sweet Plaintiffs’ Motion to Withdraw the
21 Reference for the adjudication and liquidation of the Sweet Plaintiffs’ willful and malicious
22 injury variant of their claims that have been preserved in the Adversary Proceeding.

23 **III. If the Court finds Withdrawal is Not Mandatory, Substantial Cause Exists for the**
24 **Court to Exercise Permissive Withdrawal.**

25 Even if this Court finds that withdrawal is not *mandatory*, the Court still has the
26 discretion to allow the Sweet Plaintiffs to proceed on their claims against the Debtor Defendants
27 in the District Court Lawsuit upon a sufficient showing of “cause” for withdrawal of the
28 reference. Under 28 U.S.C.S. § 157(d), “the district court may withdraw, in whole or in part
any case proceeding referred under this section, on its own motion or on timely motion of any

1 party, for cause shown.”. Although the Bankruptcy Code does not expressly define what
2 constitutes “cause” under Section 157(d), to determine whether cause for such permissive
3 withdrawal exists, a court “should first evaluate whether the claim is core or non-core.” *In re*
4 *City of San Bernardino*, Cal., 2015 U.S. Dist. LEXIS 152833, *13-14 (citing *Temecula Valley*
5 *Bancorp*, 523 B.R. at 214 (quoting *In re Orion Pictures Corp.*, 4 F.3d 1095, 1101 (2d Cir.
6 1993))). Other factors that the court considers include: (1) judicial economy; (2) uniform
7 bankruptcy administration; (3) reduction of forum shopping; (4) economical use of debtors’
8 and creditors['] resources; (5) expediting the bankruptcy process; and (6) the presence of a jury
9 demand. *See Sec. Farms v. Int’l Bhd. Of Teamsters, Chauffers, Warehousemen & Helpers*, 124
10 F.3d 999, 1008 (9th Cir. 1999) (citing *In re Orion Pictures Corp.*, 4 F.3d 1095, 1101 (2d Cir.
11 1993)). Here, the Sweet Plaintiffs have preserved and are legally entitled to a jury trial on
12 personal injury-type claims that the Bankruptcy Court cannot provide. Moreover, the
13 adjudication and liquidation of the Sweet Plaintiffs’ claims against the Debtor Defendants
14 involve a non-core proceeding whose separate processing through the Bankruptcy Court
15 threatens both wasted duplication of efforts and resources, unjustified confusion of the issues
16 and inconsistent outcomes, and delays that run counter to the system of orderly and prompt
17 administration of justice our federal judicial system prizes.

18 **A. Withdrawal of the Reference is Necessary Because the Proceeding Requires**
19 **Consideration of Non-Bankruptcy Law and Involves Non-Core Proceedings.**

20 One of the most important of the factors that courts use in determining whether there is
21 cause to withdraw the reference is whether the claims sought to be withdrawn are core or non-
22 core. *See In re PW Supermarkets, Inc.*, 2015 WL 4456213 (USBC N.D. Cal. 2015). Claims that
23 arise “under or in” the bankruptcy statutes “are deemed to be ‘core’ proceedings, while claims
24 that are related to [the bankruptcy statutes] are ‘noncore’ proceedings.” *Maitland v. Mitchell*
25 *(In re Harris Pine Mills)*, 44 F.3d 1431, 1435 (9th Cir. 1995). A non-exhaustive list of core
26 proceedings set out in 28 U.S.C. § 157(b)(2) specifically exempts “personal injury tort or
27 wrongful death claims” against a bankruptcy estate in two provisions, § 157(b)(2)(B)
28 (exempting “liquidation or estimation of contingent or unliquidated personal injury tort or
wrongful death claims against the estate for purposes of distribution in a case under Title 11”),

1 and § 157(b)(2)(O) (exempting “other proceedings affecting the liquidation of the assets of the
2 estate or the adjustment of the debtor-creditor or the equity security holder relationship, **except**
3 **personal injury tort or wrongful death claims.**” (emphasis added)). The statute’s clear
4 relegation of the type of tort personal injury and wrongful death claims at the heart of the
5 Adversary Proceeding here to non-core status provides substantial cause for withdrawing the
6 reference on adjudication and liquidation of such claims. *See Rohr v. Northwestern Corp. (In*
7 *re Northwestern Corp.)*, No. 03-12872 CGC, 04-110 JJF, 2004 U.S. Dist. LEXIS 7702, 2004
8 WL 1044421 (D. Del., April 29, 2004) (movant established sufficient cause to withdraw the
9 reference from bankruptcy court in light of fact that section 157(b)(5) required personal injury
10 tort claims to be resolved in district court).

11 Additionally, the Ninth Circuit has referenced several factors that may be useful in
12 determining whether or not a matter is a core proceeding including “whether the rights involved
13 exist independent of [the bankruptcy statutes], depend on state law for their resolution, existed
14 prior to the filing of a bankruptcy petition, or were significantly affected by the filing of the
15 bankruptcy case.” *In re Cinematronics, Inc.*, 916 F.2d 1444, 1450 n.5 (9th Cir. 1990). Applying
16 those standards, the claims asserted by the Sweet Plaintiffs against the Debtor Defendants in
17 the Adversary Proceeding constitute non-core proceedings. Even the Sweet Plaintiffs’ claims
18 under Section 1983 for wrongful death and personal injury arise under separate sources of
19 federal law that are reserved traditionally to the District Courts for resolution, and not under the
20 Bankruptcy Code. Lastly, the Sweet Plaintiffs’ claims exist independent of the bankruptcy
21 statutes, and the Sweet Plaintiffs had proceeded against the Debtor Defendants and Non-Debtor
22 Defendants for almost two years before the Debtor Defendants filed their bankruptcy petition.
23 As such, the Court should find that the liability adjudication questions (as opposed to the
24 dischargeability questions) in the Adversary Proceeding are wholly non-core matters, that such
25 non-core matters predominate in the Adversary Proceeding, and that therefore cause exists to
26 withdraw the reference on the liability adjudication questions. *See Veys v. Riske*, 2007 U.S.
27 Dist. LEXIS 90623, *5, 2007 WL 4246172 (“Where noncore issues predominate, withdrawal
28 may promote efficiency because a single proceeding in the district court could avoid

unnecessary costs implicated by the district court's de novo review of bankruptcy court determinations.”); *In re Cinematronics, Inc.*, 916 F.2d 1444, 1451 (9th Cir. 1990) (because party had a right to a jury trial with regard to non-core proceedings, and because bankruptcy court lacked authority to conduct jury trials, district court’s denial of motion to withdraw the reference was an abuse of discretion).

B. Withdrawal of the Reference is Necessary Because the Sweet Plaintiffs are Entitled to a Jury Trial.

The Sweet Plaintiffs have a right to a jury trial on factual issues and causes of action asserted in their Adversary Complaint and preserved that right by filing their demand for a jury trial. [*See* Adversary Proceeding Doc. 13 (Sweet Plaintiffs’ Demand for Jury Trial), District Court Lawsuit; and District Court Lawsuit Doc. 53 at ¶ 323 (demand for jury trial in District Court Lawsuit)]. This fact alone weighs heavily in favor of granting withdrawal.

Additionally, the Adversary Proceeding involves assertion by the Sweet Plaintiffs of multiple non-core causes of action arising under federal and state law. Given the defenses that have already been affirmatively asserted by the Debtor Defendants in answering the Sweet Plaintiffs’ pleading in the District Court Lawsuit [*See* District Court Lawsuit Doc. 141 (Brailsfords’ Answer)], and the positions taken by the Non-Debtor Defendants in their summary judgment motions, and in their depositions, there will likely be multiple contested issues of fact regarding whether Debtor Defendant Brailsford, along with the Non-Debtor Defendants, violated their known duties to protect Daniel Shaver, to not deploy deadly force against him, and to intervene when other officers took actions that endangered Daniel Shaver and/or made his wrongful shooting likely. Again, the Sweet Plaintiffs would be entitled to a jury trial on such disputed factual issues, which the Bankruptcy Court could not provide. *See e.g., Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1194 (9th Cir. 2003) (citing 28 U.S.C. § 157(e) (“[T]he bankruptcy court is unable to preside over a jury trial absent explicit consent from the parties and the district court.”); *see also In re Cinematronics, Inc.*, 916 F.2d 1444, 1451 (9th Cir. 1990) (bankruptcy court cannot conduct jury trial in noncore proceedings). The entitlement to a jury trial provides further “cause” for granting withdrawal of the reference.

1 **C. Withdrawal of the Reference is Necessary Because of the Overlapping**
2 **Claims, Parties, Witnesses, and Evidence.**

3 The claims asserted in the Adversary Proceeding originated in the currently pending
4 District Court Lawsuit and completely overlap with the non-willful and malicious injury variant
5 of the claims the Sweet Plaintiffs plead against the Debtor Defendants in the District Court
6 Lawsuit, and which remain pending there for trial so that the Sweet Plaintiffs may enforce their
7 claims against any indemnitors or insurers of the Debtor Defendants. The claims subject to the
8 Adversary Proceeding are also highly overlapping with the claims asserted by the Sweet
9 Plaintiffs in the District Court Lawsuit against the five (5) other Non-Debtor individual
10 Defendants (Messrs. Langley, Doane, Gomez, Cochran and Elmore) who were the other police
11 officers on the team responsible for Daniel Shaver's killing, and against Defendant City of
12 Mesa, who employed Debtor Defendant Philip Mitchell Brailsford and the others. Trying the
13 claims in different courts and through different trials threatens again to nearly completely
14 duplicate much trial time, witness testimony, and argument.

15 The District Court Lawsuit is also nearing completion, with depositions completed, the
16 primary discovery period concluded, and only one round of short supplemental summary
17 judgment arguments on completely new issues that may have been discovered in the depositions
18 to occur. Then, the matter may proceed to trial. The Sweet Plaintiffs are already entitled to
19 include in that trial their claims against the Debtor Defendants to the extent they seek
20 adjudication and liquidation for enforcement against insurers or indemnitors of the Debtor
21 Defendants. It makes no sense to put the willful and malicious injury variants of those same
22 claims on an entirely separate track that would demand separate discovery, reopen expert
23 disclosure deadlines that all parties – including the Debtor Defendants – already met, and
24 possibly open reargument in a different forum of substantive dispositive motion issues that are
25 already law of the case in the District Court Lawsuit – including those rulings that were made
26 on the Debtor Defendants' motions to dismiss. Split proceedings threatens tremendous
27 duplication of court and party efforts, prejudicial reopening of closed matters, and unnecessary
28 delay in getting the Sweet Plaintiffs' entire set of claims to trial.

 What's more, the facts, witnesses, and arguments to be presented and raised at trial are

things Judge Snow is already intimately familiar with through his active management of the District Court Lawsuit. Judge Snow has particular familiarity with the federal and state wrongful death and constitutional tort claims at issue in this case, the facts relevant to determining those claims, the Non-Debtor Defendants and witnesses involved in this case, and any of the issues that will be briefed, and already have been briefed, by the parties. Judge Snow's familiarity is particularly important given the complexity and interconnection of legal and factual issues that will be presented to the District Court in the underlying District Court Lawsuit in the Sweet Plaintiffs' case against the Non-Debtor Defendants, which will be exactly the same as or substantially overlapping with those presented against the Debtor Defendants. Where proceeding before the District Court offers efficiency benefits that the Bankruptcy Court cannot also offer, withdrawal of the reference is appropriate. *Cf. Innovasystems, Inc. v. Proveris Scientific Corporation*, 2013 WL 5539288 (U.S.D.C. Dist. NJ 2013).

Moreover, because the liability determinations for the claims asserted in the Adversary Proceeding do not arise under or implicate bankruptcy law, the Bankruptcy Court's expertise is not required until the claims have been adjudicated and liquidated. At that time, the Bankruptcy Court's expertise may be very helpful in determining the dischargeability of the Sweet Plaintiffs' claims. But for the current stage of the proceedings, delay in the withdrawal would only serve to force duplicative, inefficient and wasteful parallel efforts.

It would thus be highly inefficient, and even require illogical duplication of efforts, to try the same claims in two different proceedings. The resources of the federal courts would be illogically doubly taxed, as would the time and financial resources of all the parties in preparing for trial and presenting their cases. Avoiding such issues offers compelling reasons to withdraw the reference. *See In re Namazi*, 106 B.R. 93, 94-94 (V.E. Bankr. 1989) (the "distinct probability that the debtor would face similar litigation in the bankruptcy court to determine the dischargeability of the creditor's debt" weighed in favor of allowing the district court case to proceed against all defendants).

D. Withdrawing the Reference Eliminates the Risk of Inconsistent Liability Determinations.

Allowing all variants of the Sweet Plaintiffs' claims against the Debtor Defendants to

1 proceed to a single trial before the District Court will also promote uniformity in liability
2 determinations. Separate trials of the same claims in District Court and before the Bankruptcy
3 Court creates the possibility of liability determinations that are inconsistent or, in fact, wholly
4 contradictory. Such results could easily invoke post-verdict or post-judgment motions and
5 appeals and review of the reasons for the disparate outcomes. And, disparate outcomes at the
6 trial level risk disparate outcomes on the separate appeals that might result. Those risks further
7 provide sufficient cause for withdrawal of the reference.

8 **E. The Balance of Prejudice Concerns Favors Withdrawing the Reference.**

9 Withdrawal of the reference threatens no real prejudice to the Debtor Defendants, while
10 failure to withdraw the reference promises substantial prejudice to the Sweet Plaintiffs.

11 The Sweet Plaintiffs filed their claims in the District Court Lawsuit long before the
12 Debtor Defendants filed their bankruptcy proceeding. Indeed, the bankruptcy filing came after
13 a formalized settlement agreement between the City of Mesa, which had fired Debtor Defendant
14 Philip Mitchell Brailsford. That settlement allowed Mr. Brailsford to be re-employed for
15 purposes of seeking long-term disability benefits, and promised him and his wife
16 indemnification in return for cooperation with the City of Mesa's defense against the Sweet
17 Plaintiffs. One might cynically view the Brailsfords' bankruptcy filing as partial fulfillment of
18 that cooperation pledge, as it appears from statements made before the Bankruptcy Court that
19 the payment of the Debtor Defendants' bankruptcy counsel is not coming from the Brailsfords,
20 but from their defense counsel in the District Court Lawsuit, who is presumably being retained
21 and paid by the City of Mesa or its insurer(s). Thus, there would be no prejudice to the Debtor
22 Defendants to have them join the other Non-Debtor Defendants and their lawsuit
23 insurer/funding source, the City of Mesa.

24 Moreover, until their bankruptcy filing, the Debtor Defendants were active participants
25 in the pre-trial motion practice before Judge Snow. Matters proceeded in the District Court
26 Lawsuit over the past several months through completion of the Non-Debtor Defendants'
27 summary judgment motions. Thus, the Debtor Defendants have obtained a substantial
28

1 advantage in seeing how the Sweet Plaintiffs responded to the Non-Debtor Defendants'
2 summary judgment motions, and in seeing how the District Court ruled on those arguments.

3 Counsel for the Debtor Defendants have also attended all the depositions in the District
4 Court Lawsuit. They are not behind on information gathering. And, through their own
5 discovery responses, expert reports, and motion arguments, the Debtor Defendants have
6 committed themselves to facts and legal positions which, absent the possibility of a separate
7 bankruptcy proceeding, they would be bound to like any other defendant. They should be given
8 no option to reargue matters or stake new positions, even on discovery, in a separate proceeding.

9 On the Sweet Plaintiffs' side of the ledger, the costs of not withdrawing the reference for
10 adjudication in the District Court Lawsuit are substantial. The Sweet Plaintiffs are heavily
11 invested in the efforts undertaken to get their claims very near to the point of trial in the District
12 Court Lawsuit. Restarting the case in the Bankruptcy Court would require not only the
13 Bankruptcy Court to get up to speed on the actions previously taken by the parties, their
14 respective prior positions, and the District Court's rulings on the Sweet Plaintiffs' claims, but
15 would force the Sweet Plaintiffs to do much unnecessary repetitive disclosure, production and
16 legal briefing in the Bankruptcy Court. And, such duplication and retreading old ground would
17 delay resolution of the Sweet Plaintiffs' claims against the Debtor Defendants unnecessarily
18 and prejudicially. As just one example, the Sweet Plaintiffs understand that the indemnity
19 agreement the City of Mesa has given the Debtor Defendants has a hard cap and involves a
20 "burning" type of indemnity obligation in which the money available is reduced by litigation
21 defense expenditures along the way. Delay and unnecessary activities will reduce the potential
22 monetary contribution the City of Mesa will be bound contractually to make toward paying off
23 any judgment should the Sweet Plaintiffs prevail on their claims against the Debtor Defendants.

24 **F. Failure to Withdraw the Reference Encourages Wasteful and Prejudicial**
25 **Gamesmanship.**

26 It would foster dangerous and wasteful gamesmanship if this Court were to allow parties
27 to actively participate in discovery and pre-trial proceedings in the District Court for over a
28 year, leading to the very edge of trial, and then, through a bankruptcy filing, force non-
dischargeable wrongful death and personal injury claims to restart or become disassociated

1 from the prior proceedings in which the debtor defendants had previously committed
2 themselves to relevant facts, defenses and legal positions. It would especially encourage forum
3 shopping, as here Judge Snow had long ago entered favorable rulings allowing much of the
4 Sweet Plaintiffs' claims against the various defendants to proceed. Moreover, given all that has
5 transpired in the District Court Lawsuit, most of which the Debtor Defendants participated
6 actively in, achieving the cost, time and resources savings, and the efficiencies promised by a
7 single trial proceeding, and avoiding the confusion, duplication of efforts and expense, and
8 possibility of inconsistent verdicts and judgments that segregated discovery and trial
9 proceedings before this Court threatens, requires this Court to allow the Sweet Plaintiffs' claims
10 against the Debtor Defendants to proceed to trial in the District Court Lawsuit.

11 **IV. Conclusion.**

12 Given all the foregoing, withdrawal of the reference is mandatory. And, even if were
13 not, there are a plethora of reasons that cause exists to implement the Sweet Plaintiffs' requests
14 for withdrawal of the reference so that the Sweet Plaintiffs' may proceed in the District Court
15 Lawsuit with their claims against the Debtor Defendants.

16 The Sweet Plaintiffs respectfully request that the Court withdraw the reference in order
17 to allow the District Court, specifically Judge Snow, to adjudicate and liquidate all variants of
18 their Section 1983 personal injury and wrongful death claims along with their parallel claims
19 against other non-debtor Defendants in the underlying District Court Lawsuit. Once the Sweet
20 Plaintiffs claims have been adjudicated and liquidated, then the Bankruptcy Court is the
21 appropriate forum to consider dischargeability of any resulting judgments.

22 RESPECTFULLY SUBMITTED this 13th of December, 2019.

23 BASKIN RICHARDS PLC

24
25 /s/ William A. Richards

26 William A. Richards

27 Alan S. Baskin

28 Shayna G. Stuart

2901 N. Central Avenue, Suite 1150

Phoenix, AZ 85012

CERTIFICATE OF SERVICE

I hereby certify that on December 13, 2019, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF system for filing to:

Nathan A. Finch
Catalyst Legal Group PLLC
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Chandler, AZ 85225
*Attorneys for Debtor Defendants Philip Mitchell Brailsford
and Corinne Brailsford*

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*Attorneys for Brailsfords Philip Mitchell Brailsford
and Corinne Brailsford*

U.S. Trustee
Office of the U.S. Trustee
230 North First Avenue, Suite 204
Phoenix, AZ 85003

/s/ Cristina McDonald

EXHIBIT A

Daniel J. O'Connor, Jr., Bar No. 010081
Justin D. Holm, Bar No. 025202
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Attorneys for Defendants Philip and Corrine Brailsford

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Laney Sweet, et al.,
Plaintiffs,
vs.
City of Mesa, et al.
Defendants.

Grady Shaver, et al.
Plaintiffs,
vs.
City of Mesa, et al.
Defendants.

Case No.: 17-CV-00152-GMS
LEAD CASE

CONSOLIDATED WITH:
Case No.: 17-cv-00715-GMS

**DEFENDANTS PHILIP AND CORRINE
BRAILSFORD'S THIRD
SUPPLEMENTAL RULE 26.1
DISCLOSURE STATEMENT**

Defendants Philip and Corrine Brailsford ("Brailsford"), through undersigned counsel and pursuant to FED R. CIV. P. 26(a)(1) and 26(a)(2), hereby disclose the following information (supplemental information is in ***bold italics***).

I THE NAME AND, IF KNOWN, THE ADDRESS AND TELEPHONE
NUMBER OF EACH INDIVIDUAL LIKELY TO HAVE DISCOVERABLE
INFORMATION RELEVANT TO DISPUTED FACTS ALLEGED WITH
PARTICULARITY IN THE PLEADINGS, IDENTIFYING THE SUBJECTS
OF THE INFORMATION:

1. Laney Sweet
c/o Plaintiffs' counsel

Plaintiff is expected to testify consistent with the allegations raised in the Amended Complaint regarding the events prior to, during, and after each subject incident; any statements given; information regarding her mental health; treatment and damages; and as to any other relevant and admissible matters.

2. Grady Shaver
c/o Plaintiffs' counsel

Plaintiff is expected to testify consistent with the allegations raised in the Amended Complaint regarding the events prior to, during, and after each subject incident; any statements given; information regarding his mental health; treatment and damages; and as to any other relevant and admissible matters.

3. Norma Shaver
c/o Plaintiffs' counsel

Plaintiff is expected to testify consistent with the allegations raised in the Amended Complaint regarding the events prior to, during, and after each subject incident; any statements given; information regarding her mental health; treatment and damages; and as to any other relevant and admissible matters.

4. Philip Brailsford
c/o O'Connor & Campbell, PC

Defendant Brailsford is expected to testify regarding his knowledge and involvement in the events in this case.

5. Charles Langley
c/o J. Belanger Law PLLC

Defendant Langley is expected to testify regarding his knowledge and involvement in the events in this case.

- 1 6. Brian Elmore,
2 c/o Wieneke Law Group, PLC
3 ~~Struck Wieneke & Love PLC~~

4 Defendant Elmore is expected to testify regarding his knowledge and
5 involvement in the events in this case.

- 6 7. Christopher Doane
7 c/o Wieneke Law Group, PLC
8 ~~Struck Wieneke & Love PLC~~

9 Defendant Doane is expected to testify regarding his knowledge and
10 involvement in the events in this case.

- 11 8. Richard Gomez
12 c/o Wieneke Law Group, PLC
13 ~~Struck Wieneke & Love PLC~~

14 Defendant Gomez is expected to testify regarding her knowledge and
15 involvement in the events in this case.

- 16 9. Bryan Cochran
17 c/o Wieneke Law Group, PLC
18 ~~Struck Wieneke & Love PLC~~

19 Defendant Cochran is expected to testify regarding his knowledge and
20 involvement in the events in this case.

- 21 10. Leticia Jimenez
22 c/o Jones, Skelton & Hochuli, PLC

- 23 11. Jeremy Johnson
24 c/o Jones, Skelton & Hochuli, PLC

- 25 12. Luis Nunez
26 3062 Los Arenales, Las Cruces, New Mexico

13. Monique Portillo
 414 East 16th Street Apartment #414, Silver City, New Mexico

14. Alicia Rice
 c/o Jones, Skelton & Hochuli, PLC

- 1 15. Steven Robinson
2 2437 South Catarina, Mesa, Arizona
- 3 16. Linda Sauret
4 1860 Dallons Drive, Paso Robles, California
- 5 17. Vincent Sauret
6 1860 Dallons Drive, Paso Robles, California
- 7 18. E.S.
8 c/o Plaintiffs' counsel
- 9 19. N.S.
10 c/o Plaintiffs' counsel
- 11 20. Kevin Sweet
12 1575 Timbercreek Drive, Stephenville, Texas
- 13 21. Crime Scene Technician Brakeman
14 c/o Wieneke Law Group, PLC
- 15 22. Crime Scene Technician Kim Castaneda
16 c/o Wieneke Law Group, PLC
- 17 23. Crime Scene Technician Jeanne Cybulski
18 c/o Wieneke Law Group, PLC
- 19 24. Crime Scene Technician C. Gunsolley
20 c/o Wieneke Law Group, PLC
- 21 25. Crime Scene Technician Thomas Hewson
22 c/o Wieneke Law Group, PLC
- 23 26. Crime Scene Technician K. Kloss
24 c/o Wieneke Law Group, PLC
- 25 27. Crime Scene Technician T. Kurtz
26 c/o Wieneke Law Group, PLC
28. Crime Scene Technician Robyn Travsano
c/o Wieneke Law Group, PLC

- 1 29. Detective J. Bocock
2 c/o Wieneke Law Group, PLC
- 3 30. Detective Amundsen
4 c/o Wieneke Law Group, PLC
- 5 31. Detective C. Barna
6 c/o Wieneke Law Group, PLC
- 7 32. Detective L. Barrientos
8 c/o Wieneke Law Group, PLC
- 9 33. Detective A. Johnson
10 c/o Wieneke Law Group, PLC
- 11 34. Detective M. Rayburn
12 c/o Wieneke Law Group, PLC
- 13 35. Detective Sipe
14 c/o Wieneke Law Group, PLC
- 15 36. Officer Teri Gould
16 c/o Wieneke Law Group, PLC
- 17 37. Officer A. Johnson
18 c/o Wieneke Law Group, PLC
- 19 38. Officer Redden
20 c/o Wieneke Law Group, PLC
- 21 39. Officer M. Sanford
22 c/o Wieneke Law Group, PLC
- 23 40. Officer S. Sorenson
24 c/o Wieneke Law Group, PLC
- 25 41. Officer S. Stevenson
26 c/o Wieneke Law Group, PLC
- 26 42. Officer P. Swanson
c/o Wieneke Law Group, PLC

- 1 43. Officer R. Worrell
2 c/o Wieneke Law Group, PLC
- 3 44. Sergeant J. Gomez
4 c/o Wieneke Law Group, PLC
- 5 45. Sergeant Charles Langley
6 c/o J. Belanger Law, PLLC
- 7 46. Sergeant N. Lien
8 c/o Wieneke Law Group, PLC
- 9 47. Master Sergeant M. Njaa
10 c/o Wieneke Law Group, PLC
- 11 48. Sergeant J. Reynolds
12 c/o Wieneke Law Group, PLC
- 13 49. Dwayne Hill
14 Interface System
- 15 50. Diane Michelin
16 ANI Networks
- 17 51. Gino Capozzi
18 Call Catchers, Inc. d/b/a Freedom Voice Systems
- 19 52. All individuals listed in any party's Disclosure Statement, Witness
20 Lists and any supplements thereto.
- 21 53. All individuals referenced in any party's request for admissions,
22 interrogatories, and requests for production of documents, and any supplements
23 thereto, as well as responses to any discovery requests.
- 24 54. Defendants Brailsford will supplement the foregoing list as
25 appropriate.
- 26

Defendants Brailsford incorporate all of the names, contact information, and summaries included in the City Defendants' Sixth Supplemental Disclosure Statement dated December 4, 2018.

II. A COPY OF, OR A DESCRIPTION BY CATEGORY AND LOCATION OF, ALL DOCUMENTS, DATA COMPILATIONS, AND TANGIBLE THINGS IN THE POSSESSION, CUSTODY, OR CONTROL OF THE PARTY THAT ARE RELEVANT TO DISPUTED FACTS ALLEGED WITH PARTICULARITY IN THE PLEADINGS: (Unless otherwise noted, copies of the below listed documents are attached hereto)

1. 911 Calls, tracks 1 and 2 (produced by Plaintiff Sweet as PL SWEET000001 and PL SWEET000004),
2. Radio Traffic, tracks 1 and 2 (produced by Plaintiff Sweet as PL SWEET000003 and PL SWEET000006),
3. Departmental Report 2016-0180586 (produced by LQ Management as MESAPD 00001- MESAPD 00291),
4. Officer Brailsford REDACTED Body Cam (produced by Plaintiff Sweet as PL SWEET000022),
5. Officer Doane's REDACTED Body Cam (produced by Plaintiff Sweet as PL SWEET000023),
6. Audio Interview of Alicia Rice (produced by City of Mesa as COM_000383; LQ Management as MESAPC 000814; Sweet as PL SWEET000027),
7. Audio Interview of Edward Reyes (produced by LQ Management as MESAPD 000816; Sweet as PL SWEET000037),
8. Audio Interview of Jeremy Johnson (produced by LQ Management as MESAPD 000813; Sweet as PL SWEET000028),
9. Audio Interview of Leticia Jimenez (produced by LQ Management as MESAPD 000812; Sweet as PL SWEET000030),
10. Audio Interview of Luis Nunez (produced by LA Management as MESAPD 000811; Sweet as PL SWEET000031),

- 1 11. Audio Interview of Monique Portillo (produced by LA Management as
- 2 MESAPD 000810; Sweet as PL SWEET000024),
- 3 12. Audio Follow-Up Interview of Monique Portillo (produced by LQ
- 4 Management as MESAPD 000820; Sweet as PL SWEET000036),
- 5 13. Audio Interview of Kevin Sweet (produced by LQ Management as
- 6 MESAPD 000821; Sweet as PL SWEET000034),
- 7 14. Audio Interview of Laney Sweet (produced by LQ Management as
- 8 MESAPD 000818; Sweet as PL SWEET000033),
- 9 15. Audio Interview of Grady Shaver (produced by LQ Management as
- 10 MESAPD 000819; Sweet as PL SWEET000032),
- 11 16. Audio Interview of Lance Shaver (produced by LQ Management as
- 12 MESAPD 000822; Sweet as PL SWEET000029),
- 13 17. Audio Interview of Steve Robinson (produced by LQ Management
- 14 as MESAPD 000817; Sweet as PL SWEET000035),
- 15 18. Audio Interview of Vincent and Linda Sauret (produced by LQ
- 16 Management as MESAPD 00015; Sweet as PL SWEET000026),
- 17 19. La Quinta Inn and Suites Cameras 1 through 3 (produced by LQ
- 18 Management as LQ 000059-61; Sweet as PL SWEET 000009-11),
- 19 20. City of Mesa Police Department's scene photographs (produced by
- 20 LQ Management as MESAPD 000331-792; Sweet as PL
- 21 SWEET000148-000752),
- 22 21. Unredacted AXON Body Cam of Officer Doane and Brailsford
- 23 (produced with Defendants' Supplemental Response to Plaintiff's
- 24 Request for Production to City of Mesa),
- 25 22. Audio Dispatch (produced by Plaintiff Sweet with their Initial
- 26 Disclosure Statement as PL SWEET000002, PL SWEET000005, PL
- SWEET000007, PL SWEET000008),
23. CAD History Printout for Event Number 20160180568 (produced by
- City of Mesa as COM_000001-19),
24. CAD History for Officer Brailsford on January 18, 2016 (produced by
- City of Mesa as COM_000020-23),

- 1 25. CAD History for Officer Cochran on January 18, 2016 (produced by
2 City of Mesa as COM_000024-25),
- 3 26. CAD History for Officer Elmore on January 18, 2016 (produced by
4 City of Mesa as COM_000026-27),
- 5 27. CAD History for Officer Gomez on January 18, 2016 (produced by
6 City of Mesa as COM_000028-30),
- 7 28. CAD History for Officers Henderson and Doane on January 18, 2016
8 (produced by City of Mesa as COM_000031-36),
- 9 29. CAD History for Sergeant Langley on January 18, 2016 (produced
10 by City of Mesa as COM_000037-40),
- 11 30. CAD History for Officer Redden on January 18, 2016 (produced by
12 City of Mesa as COM_000041-44),
- 13 31. Scene Diagram prepared by Detective M. Rayburn (produced by
14 City of Mesa as COM_000045-46)
- 15 32. Scene Diagram with measurements prepared by Detective M.
16 Rayburn (produced by City of Mesa as COM_000047-51),
- 17 33. CD containing City of Mesa panoramic photos and firearms photos
18 (produced by City of Mesa as COM_000052),
- 19 34. CD containing City of Mesa scene photos (produced by City of Mesa
20 as COM_000053; G1J2B5PR; G1J44291-G1J44562; G1JF7047-
21 G1JF7180; G1JT5515-G1JT5562; G1K1K5PT-G1K1K5PZ;
22 G1K1K5Q0-G1K1K5Q6; and G1UF8686-GIUF8757),
- 23 35. Documents received from ANI Network in response to Defendants'
24 Subpoena Duces Tecum (produced by City of Mesa as
25 COM_000054-56),
- 26 36. Documents received from Call Catchers in response to Defendants'
Subpoena Duces Tecum; the excel spreadsheet password is:
Piasecki (produced by City of Mesa as COM_000057-58),
37. Objection letter received from Google in response to Defendants'
Subpoena Duces Tecum for YouTube records (produced by City of
Mesa as COM_000059-61),

- 1 38. Transcript of Alicia Rice interview (produced by City of Mesa as
2 COM_000062-67; audio produced by Sweet as PL SWEET000027),
- 3 39. Transcript of Edward Reyes interview (produced by City of Mesa as
4 COM_000068-72; audio produced by Sweet as PL SWEET000037)
- 5 40. Transcript of Jeremy Johnson interview (produced by City of Mesa
6 as COM_000073-79; audio produced by Sweet as PL
7 SWEET000028),
- 8 41. Transcript of Leticia Jimenez interview (produced by City of Mesa as
9 COM_000080-95; audio produced by Sweet as PL SWEET000030),
- 10 42. Transcript of Luis Nunez interview (produced by City of Mesa as
11 COM_000096-111; audio produced by Sweet as PL
12 SWEET000031),
- 13 43. Transcript of Monique Portillo interview (produced by City of Mesa
14 as COM_000112-122; audio produced by Sweet as PL
15 SWEET000024),
- 16 44. Transcript of Monique Portillo's follow up interview (produced by City
17 of Mesa as COM_000123-129; audio produced by Sweet as PL
18 SWEET000036),
- 19 45. Transcript of Kevin Sweet interview (produced by City of Mesa as
20 COM_000130-147; audio produced by Sweet as PL
21 SWEET000034),
- 22 46. Transcript of Laney Sweet interview (produced by City of Mesa as
23 COM_000148-165; audio produced by Sweet as PL
24 SWEET000033),
- 25 47. Transcript of Grady Shaver interview (produced by City of Mesa as
26 COM_000166-185; audio produced by Sweet as PL
SWEET000032),
48. Transcript of Lance Shaver interview (produced by City of Mesa as
COM_000186-192; audio produced by Sweet as PL
SWEET000029),
49. Transcript of Steve Robinson interview (produced by City of Mesa as
COM_000193-200; audio produced by Sweet as PL
SWEET000035),

- 1 50. Transcript of Vincent and Linda Sauret's interview (produced by City
2 of Mesa as COM_000201-208; audio produced by Sweet as PL
3 SWEET000026),
- 4 51. Transcript of Jeremy Johnson's 911 call, part 1 (produced by City of
5 Mesa as COM_000209-213; audio produced Sweet as PL
6 SWEET000001),
- 7 52. Transcript of Jeremy Johnson's 911 call, part 2 (produced by City of
8 Mesa as COM_000214-218; audio produced Sweet as PL
9 SWEET000004),
- 10 53. Transcript of Radio Transmission, track 1 (produced by City of Mesa
11 as COM_000219-220; audio produced by Sweet as PL
12 SWEET000003),
- 13 54. Transcript of Radio Transmission, track 2 (produced by City of Mesa
14 as COM_000221-239; audio produced by Sweet as PL
15 SWEET000006),
- 16 55. Documents received from Christy Carlson in response to
17 Defendants' Subpoena Duces Tecum (produced by Sweet as
18 CC000001-41)
- 19 **56. Report with attachments from Michael G. Schott dated**
20 **November 12, 2018 (Brailsford-Schott0001-0021)**
- 21 **57. Report with attachments from Emanuel Kapelsohn dated**
22 **January 17, 2019 (Brailsford-Kapelsohn001-094)**
- 23 56. All interrogatories propounded in this action and answers thereto.
- 24 57. All requests for admissions propounded in this action and responses
25 thereto.
- 26 58. All documents provided in response to requests for production of
documents.
59. All documents provided in response to subpoena requests.
60. All documents provided in response to public records requests.
61. All depositions taken in this case and exhibits thereto.

1 62. All pleadings and records on file in this case.

2 63. All exhibits listed by any other party.

3 64. All expert's reports and files.

4 Defendants Brailsford may rely on the information and exhibits included in
5 the City Defendants' Sixth Supplemental Disclosure Statement dated December
6 4, 2018.

7 **III. A COMPUTATION OF ANY CATEGORY OF DAMAGES CLAIMED BY**
8 **THE DISCLOSING PARTY MAKING AVAILABLE FOR INSPECTION**
9 **AND COPYING AS UNDER RULE 34 THE DOCUMENTS OR OTHER**
10 **EVIDENTIARY MATERIAL NOT PRIVILEGED OR PROTECTED FROM**
11 **DISCLOSURE ON WHICH SUCH COMPUTATION IS BASED**
12 **INCLUDING MATERIALS BEARING ON THE NATURE AND EXTENT**
13 **OF INJURIES SUFFERED:**

14 Defendants Brailsford are not seeking damages other than costs incurred
15 in defending this action.

16 **IV. THE IDENTITY OF ANY PERSON WHO MAY BE USED AT TRIAL TO**
17 **PRESENT EVIDENCE UNDER RULES 702, 703 OR 705 OF THE**
18 **FEDERAL RULES OF EVIDENCE:**

19 Defendants Brailsford will supplement with names and opinions as
20 discovery proceeds.

21 **V. EXPERTS:**

22 1. Emanuel Kapelsohn
23 1771 Creekview Drive
24 Fogelsville, PA 18051

25 Mr. Kapelsohn is a use of force expert, and he testified on Mr. Brailsford's
26 behalf during his criminal trial. Mr. Kapelsohn will testify Brailsford's relevant
conduct was objectively reasonable and within the standard of a reasonable
officer. It is anticipated Mr. Kapelsohn will testify consistently with his trial
testimony and forthcoming expert report, ***dated January 17, 2019. which will be
provided on or before January 15, 2018.***

1 2. Michael G. Schott
2 PO Box 387
3 Fort Jones, CA 96032

4 Mr. Schott is a forensic image analyst, and he testified on Mr. Brailsford's
5 behalf during his criminal trial. Mr. Schott will testify through use of forensic video
6 analysis Brailsford's relevant conduct was objectively reasonable and within the
7 standard of a reasonable officer. It is anticipated Mr. Schott will testify
8 consistently with his trial testimony and forthcoming expert report, ***dated***
9 ***November 12, 2018. which will be provided on or before January 15, 2018.***

10 **Note: Defendants Brailsford may use at trial any witness, expert or**
11 **item of evidence disclosed by any party to this action subject to and**
12 **without waiving any trial objections these Defendants may have regarding**
13 **the same. This notice is to advise all parties that these Defendants will not**
14 **duplicate other parties' disclosures but may at the time of trial rely upon**
15 **evidence, witnesses, experts and opinions of experts as if fully disclosed**
16 **by these Defendants without the necessity of duplicating other parties'**
17 **disclosure statements and attachments "thereto"; this includes any**
18 **witness, expert, expert opinions or items of evidence which are**
19 **subsequently de-listed by the party initially disclosing the same**

20 Dated: January 18, 2019.

21 **O'CONNOR & CAMPBELL, P.C.**

22 By: /s/ Justin D. Holm

23 Daniel J. O'Connor, Jr.

24 Justin D. Holm

25 Attorneys for Defendants

26 Philip and Corrine Brailsford

COPY emailed January 18, 2019 to:

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an individual, on her own behalf and
as guardian of Plaintiffs E.S. and
N.S., and as representative of the
Plaintiff Estate of Daniel Shaver*

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